

# Jurisdiction, Transfer, and Venue

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## 2.1 Family Division Jurisdiction Over Proceedings Involving Juveniles

Prior to January 1, 1998, the juvenile division of the probate court had “original jurisdiction in all cases of juvenile delinquents . . . , except as provided by law.” Const 1963, art 6, § 15, MCL 600.841; MSA 27A.841, and MCL 712A.2; MSA 27 3178(598.2).

Effective January 1, 1998, the newly created Family Division of the Circuit Court (“Family Division”) was assigned jurisdiction over juvenile delinquency proceedings. MCL 600.1001; MSA 27A.1001, and MCL 600.1021(1)(e); MSA 27A.1021(1)(e). Except as otherwise provided by law, the Family Division now has sole and exclusive jurisdiction over cases involving juveniles commenced on or after January 1, 1998. MCL 600.601(3); MSA 27A.601(3), and MCL 712A.2(a) and (d); MSA 27.3178(598.2)(a) and (d).

**NOTE:** MCL 600.1009; MSA 27A.1009, states that a reference to the former juvenile division of the probate court in any statute shall be construed as a reference to the family division of circuit court. See also MCR 5.903(A)(8) (“juvenile court” or “court” means Family Division of the Circuit Court when used in court rules).

A “juvenile” is defined in MCR 5.903(B)(2) as a minor defendant alleged or found to be within the jurisdiction of the court because of having committed an offense. An “offense by a juvenile” is defined in MCR 5.903(B)(4) as an act which violates a criminal statute, a criminal ordinance, an act which violates MCL 712A.2(a) or (d); MSA 27.3178(598.2)(a) or (d), or an act which violates a traffic law other than an offense designated as a civil infraction.

The laws within the Juvenile Code (MCL 712A.1 et seq.; MSA 27.3178(598.1) et seq.) must be liberally construed so that each juvenile coming within the jurisdiction of the Family Division receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile’s welfare and the best interest of the state. MCL 712A.1(3); MSA 27.3178(598.1)(3), and MCR 5.902(B). If a juvenile is removed from the control of his or her parent, the juvenile must be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents. *Id.* The court rules governing juvenile proceedings within the Family Division are to be construed to secure fairness, flexibility, and simplicity. MCR 5.902(A).

## 2.2 Informal Jurisdiction of Family Division\*

The Family Division may determine that services should be offered to the juvenile without the filing or authorization of a formal petition. The Family Division has the authority to establish or assist in the development of programs within the county to prevent delinquency and to provide services to act upon reports submitted to the court related to the behavior of juveniles who do not require formal court jurisdiction but otherwise fall within the provisions of MCL 712A.2(a); MSA 27.3178(598.2)(a) (criminal and status offenses). These services must be voluntarily accepted by the juvenile and his or her parents, guardian, or custodian. MCL 712A.2(e); MSA 27.3178(598.2)(e). Furthermore, the court may use informal procedures only if the court complies with the requirements of the Juvenile Diversion Act. MCL 712A.11(7); MSA 27.3178(598.11)(7).

\*See Chapter 6 for a detailed explanation of diversion and informal procedures.

## 2.3 Family Division Jurisdiction Over Status Offenders

“Status offender” is the term commonly used to refer to juveniles who are alleged to fall within the exclusive original jurisdiction of the Family Division pursuant to MCL 712A.2(a)(2)–(4); MSA 27.3178(598.2)(a)(2)–(4).<sup>\*</sup> Status offenders are juveniles under 17 years of age who are found within the county and who meet any of the following requirements:

(2) The juvenile has deserted his or her home without sufficient cause and the court finds on the record that the juvenile has been placed or refused alternative placement or the juvenile and the juvenile’s parent, guardian or custodian have exhausted or refused family counseling (“runaways”).

(3) The juvenile is repeatedly disobedient to the reasonable and lawful commands of his or her parent, guardian, or custodian and the court finds on the record by clear and convincing evidence that court-accessed services are necessary (“incorrigibles”). See *In re Weiss*, 224 Mich App 37, 41 (1997) (disobedience need not occur at home but may encompass illegal conduct and improper school conduct).

(4) The juvenile wilfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile’s educational needs, or repeatedly violates rules and regulations of the school or other learning program, and the court finds on the record that the juvenile, the juvenile’s parent, guardian, or custodian, and school officials or learning program personnel have met on the juvenile’s educational problems, and educational counseling and alternative agency help have been sought (“truants”). “Learning program” means an organized educational program that is appropriate, given the age, intelligence, ability, and any psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

A juvenile is “found within the county” where the offense occurred or where the juvenile is physically present. MCR 5.926(A).<sup>\*</sup>

<sup>\*</sup>See Sections 2.5 (transfer), 3.3(G) (emergency removal from home), and 12.11 (placement) for special requirements if the status offender is an Indian child.

<sup>\*</sup>See Section 2.14 (transfer of case to juvenile’s county of residence).

## 2.4 Concurrent Jurisdiction Over Wayward Minors Between the Ages of 17 and 18

The district court has original jurisdiction over persons 17 years of age or older who commit criminal offenses. However, if during the pendency of a criminal case against a defendant 17 years of age it is determined that any of the conditions below exist, the court, upon motion of the prosecuting attorney, the defendant, or the defendant’s representative, may transfer the case to the Family Division of the county in which the offense is alleged to have been committed. MCL 764.27; MSA 28.886. If the Family Division finds on the record that voluntary services have been exhausted or refused, the court has concurrent jurisdiction in proceedings concerning juveniles between the ages of 17 and 18 who are found within the county and meet any of the following requirements:

- (1)The juvenile is repeatedly addicted to the use of drugs or the intemperate use of alcoholic liquors.
- (2)The juvenile repeatedly associates with criminal, dissolute, or disorderly persons.
- (3)The juvenile is found of his or her own free will and knowledge in a house of prostitution, assignation, or ill-fame.
- (4)The juvenile repeatedly associates with thieves, prostitutes, pimps, or procurers.
- (5)The juvenile is wilfully disobedient to the reasonable and lawful commands of his or her parent, guardian, or other custodian and is in danger of becoming morally depraved.

MCL 712A.2(d)(1)–(5); MSA 27.3178(598.2)(d)(1)–(5). See, generally, *People v Sabo*, 65 Mich App 573, 578–79 (1975), where the Court of Appeals discussed the interaction between these unusual statutes.

**NOTE:** The “wayward minors” provisions of the jurisdiction statute are rarely, if ever, used by the trial courts in Michigan. Consequently, there will be no further discussion of these provisions in this benchbook. Note, however, that a case involving a “wayward minor” who is also Native American may be transferred to tribal court under certain circumstances. See Section 2.5, below.

\*See also Sections 3.3(G) (emergency removal from home) and 12.11 (placement) for other requirements.

## 2.5 Transfer of Status Offense and Wayward Minor Cases Involving Native American Juveniles\*

MCR 5.935(B)(5) states that if the juvenile is charged as a status offender or a wayward minor, and the juvenile or the juvenile’s parent is a registered member of an American Indian tribe or band, or is eligible for membership, the Family Division must follow the procedures set forth in MCR 5.980.

MCR 5.980(A)(1)–(3) provides:

- (1) If the Indian child resides on a reservation or is under tribal court jurisdiction at the time of referral, the matter must be transferred to the tribal court having jurisdiction. 25 USC 1911(a). “Indian child” is defined in 25 USC 1903(4) as any unmarried person who is under age 18 and is either a member of an Indian tribe or eligible for membership and is the biological child of a member of an Indian tribe.
- (2) If the child does not reside on a reservation, the court must ensure that the petitioner has given notice\* of the proceedings to the child’s tribe and the child’s parent or Indian custodian and, if the tribe is unknown, to the Secretary of the Interior. 25 USC 1912(a).
- (3) If the tribe exercises its right to appear in the proceedings and requests that the proceeding be transferred to tribal court, the court must

\*See Form JC 48.

transfer the case to the tribal court unless either parent objects to the transfer of the case to tribal court jurisdiction or the court finds good cause not to transfer. 25 USC 1911(b) and (c). The perceived adequacy of the tribal court or tribal services shall not be good cause to refuse to transfer the case.

## 2.6 Table Summarizing Courts With Jurisdiction Over Criminal Offenses Committed by Juveniles

The Family Division has exclusive original jurisdiction, superior to and regardless of the jurisdiction of any other court, in proceedings concerning juveniles under 17 years of age who are found within the county and who are charged with violations of ordinances or state or federal law. MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). A juvenile is “found within the county” where the offense occurred or where the juvenile is physically present. MCR 5.926(A).\*

However, the Family Division may be divested of jurisdiction over a criminal offense through several procedures. The table below shows the various possibilities when a juvenile is charged with a criminal offense.

\*See Section 2.14 (transfer of case to juvenile’s county of residence).

**Table 1: Jurisdiction Over Criminal Offenses**

Type of Proceeding	Court With Jurisdiction	Offense Alleged	Initiation of Proceedings	Cross-References
<b>“Automatic” Waiver</b>	Criminal Division of Circuit Court, after bindover from district court	Specified Juvenile Violation by 14–17 year old	Prosecutor files complaint and warrant in district court	<b>See Section 2.7 and Chapters 22 and 23</b>
<b>“Traditional” Waiver</b>	Criminal Division of Circuit Court, after waiver by Family Division of Circuit Court	Felony by 14–17 year old	Prosecutor files motion for waiver in Family Division of Circuit Court	<b>See Section 2.8 and Chapter 24</b>
<b>Designated Case</b>	Family Division of Circuit Court	Felony or misdemeanor by juvenile under 17 years old	Prosecutor may designate case if specified juvenile violation alleged; prosecutor must request designation if other offense alleged	<b>See Section 2.9 and Chapters 16 – 21</b>

Table 1: Jurisdiction Over Criminal Offenses

Type of Proceeding	Court With Jurisdiction	Offense Alleged	Initiation of Proceedings	Cross-References
<b>Delinquency Case</b>	Family Division of Circuit Court	Violation of municipal ordinance (other than civil infraction) or state or federal law	Prosecutor files petition in Family Division of Circuit Court	<b>See Chapters 6 – 15</b>

\*See Chapter 22.

## 2.7 “Automatic” Waiver of Family Division Jurisdiction\*

Under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), the Family Division has jurisdiction over a juvenile 14 years of age or older who is charged with a “specified juvenile violation” only if the prosecuting attorney files a petition in the Family Division instead of authorizing a complaint and warrant and proceeding in district court. See MCL 600.606(1); MSA 27A.606(1) (Criminal Division jurisdiction), and MCL 764.1f(1); MSA 28.860(6)(1) (filing of complaint and warrant in district court).

### A. Specified Juvenile Violations

Specified juvenile violations are:

- F burning a dwelling house, MCL 750.72; MSA 28.267;
- F assault with intent to murder, MCL 750.83; MSA 28.278;
- F assault with intent to maim, MCL 750.86; MSA 28.281;
- F assault with intent to rob while armed, MCL 750.89; MSA 28.284;
- F attempted murder, MCL 750.91; MSA 28.286;
- F first-degree murder, MCL 750.316; MSA 28.548;
- F second-degree murder, MCL 750.317; MSA 28.549;
- F kidnapping, MCL 750.349; MSA 28.581;
- F first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);
- F armed robbery, MCL 750.529; MSA 28.797;
- F carjacking, MCL 750.529a; MSA 28.797(a);
- F bank, safe, or vault robbery, MCL 750.531; MSA 28.799;
- F assault with intent to do great bodily harm, MCL 750.84; MSA 28.279, if armed with a dangerous weapon;

- F first-degree home invasion, MCL 750.110a(2); MSA 28.305a(2), if armed with a dangerous weapon;
- F escape or attempted escape from a medium- or high-security juvenile facility operated by the Family Independence Agency, or a high-security facility operated by a private agency under contract with the Family Independence Agency, MCL 750.186a; MSA 28.383a;
- F manufacture, sale, or delivery, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), or possession, MCL 333.7403(2)(a)(i); MSA 14.15(7403)(2)(a)(i), of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine;
- F any attempt, MCL 750.92; MSA 28.287, solicitation, MCL 750.157b; MSA 28.354(2), or conspiracy, MCL 750.157a; MSA 28.354(1), to commit any of the above crimes;
- F any lesser-included offense of the above offenses arising out of the same transaction if the juvenile is charged with a specified juvenile violation; and
- F any other violation arising out of the same transaction if the juvenile is charged with one of the above offenses.

MCL 712A.2(a)(1)(A)–(I); MSA 27.3178(598.2)(a)(1)(A)–(I), MCL 600.606(2)(a)–(i); MSA 27A.606(2)(a)–(i), and MCL 764.1f(2)(a)–(i); MSA 28.860(6)(2)(a)–(i).

“Dangerous weapon,” as used in the context of a specified juvenile violation, means one of the following:

- F a loaded or unloaded firearm, whether operable or inoperable;
- F a knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon;
- F an object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon; and
- F an object or device that is used or fashioned in a manner to lead a person to believe the object or device is a weapon.

MCL 712A.2(a)(1)(B); MSA 27.3178(598.2)(a)(1)(B), MCL 600.606(2)(b); MSA 27A.606(2)(b), and MCL 764.1f(2)(b); MSA 28.860(6)(2)(b).

## B. Required Procedures for “Automatic” Waiver Cases

MCL 600.606; MSA 27A.606, often termed the “automatic waiver statute,” states that the circuit court has jurisdiction to hear and determine a specified juvenile violation if committed by a juvenile 14 years of age or older and less than 17 years of age. If the prosecuting attorney has reason to believe that a juvenile between the ages of 14 and 17 has committed a specified juvenile violation, the prosecuting attorney may authorize the filing of a complaint and warrant with a magistrate

concerning a juvenile, thereby divesting the Family Division of subject matter jurisdiction. MCL 764.1f(1); MSA 28.860(6)(1), and MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). If a district court judge determines that probable cause exists that a specified juvenile violation was committed and that the juvenile committed it, the juvenile must be bound over to the circuit court, which then has jurisdiction over the juvenile. MCL 766.13; MSA 28.931, and *People v Veling*, 443 Mich 23, 31 (1993).

\*See Section 22.8(C) for a detailed explanation of the bindover decision in “automatic” waiver cases.

### C. Transfer of Case to Family Division Following Preliminary Examination in District Court\*

If at the conclusion of the preliminary examination of a juvenile the district court judge finds that a specified juvenile violation did not occur or that there is not probable cause to believe that the juvenile committed the violation, but that there is probable cause to believe that some other offense occurred and that the juvenile committed that other offense, the magistrate must transfer the case to the Family Division of the county where the offense is alleged to have been committed. MCL 766.14(2); MSA 28.932(2), MCR 6.911(B), and *People v Veling*, 443 Mich 23, 31–32 (1993).

\*See Section 7.15(C) for an explanation of the probable cause finding necessary for detention.

MCR 5.939 states that the Family Division must hear and dispose of a case transferred pursuant to MCL 766.14; MSA 28.932, in the same manner as if the case had commenced in the juvenile court. A petition that has been approved by the prosecuting attorney must be submitted to the court. The Family Division may use the probable cause finding of the magistrate made at the preliminary examination to satisfy the requisite probable cause in MCR 5.935(D).\*

Transfer of the case does not prevent the Family Division from waiving jurisdiction using the “traditional” waiver procedures under MCL 712A.4; MSA 27.3178(598.4). MCL 766.14(3); MSA 28.932(3).

\*See Chapter 24.

## 2.8 “Traditional” Waiver of Family Division Jurisdiction\*

If a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the judge of the Family Division of the county in which the offense is alleged to have been committed may waive jurisdiction upon motion of the prosecuting attorney. After waiver, the juvenile may be tried in the court having general criminal jurisdiction of the offense. MCL 712A.4(1); MSA 27.3178(598.4)(1).

\*See Chapter 24, Part II.

MCL 712A.4(3)–(4); MSA 27.3178(598.4)(3)–(4), and MCR 5.950(B) explain that the waiver proceeding consists of two phases. The first-phase hearing is held to determine whether there is probable cause that an offense has been committed which if committed by an adult would be a felony, and that there is probable cause that the juvenile who is 14 years of age or older committed the offense. MCL 712A.4(3); MSA 27.3178(598.4)(3), and MCR 5.950(B)(1).\*



If the court finds the requisite probable cause at the first-phase hearing, or if the juvenile waives the first phase of the waiver hearing, the second-phase hearing must be held to determine whether the interests of the juvenile and the public would best be served by granting the motion. MCL 712A.4(4); MSA 27.3178(598.4)(4), and MCR 5.950(B)(2).\*

\*See Chapter 24, Part III.

However, MCR 5.950(B)(2) and MCL 712A.4(5); MSA 27.3178(598.4)(5), state that if the juvenile has previously been subject to the jurisdiction of the circuit court under MCL 712A.4; MSA 27.3178(598.4) (“traditional” waiver), or MCL 600.606; MSA 27A.606 (“automatic” waiver), or the Recorder’s Court of the City of Detroit under MCL 712A.4; MSA 27.3178(598.4), or MCL 725.10a(1)(c); MSA 27.3950(1)(1)(c) (“traditional” or “automatic” waiver for offense within City of Detroit), then the Family Division must waive jurisdiction to the court of general criminal jurisdiction without holding the second-phase hearing.

## 2.9 Designated Cases in Family Division\*

\*See Chapters 16–21.

According to MCR 5.903(A)(20), a “designated proceeding” means a proceeding in which the prosecutor has designated, or has asked the court to designate, the case for trial in the Family Division in the same manner as an adult. A juvenile tried “in the same manner as an adult” is afforded all the legal and procedural protections that an adult would be given if charged with the same offense in a court of general criminal jurisdiction. MCL 712A.2d(3); MSA 27.3178(598.2d)(3), and MCR 5.903(D)(9). A plea of guilty or nolo contendere, or a verdict of guilty, results in the entry of a judgment of conviction. The conviction has the same effect and liabilities as if it had been obtained in a court of general criminal jurisdiction. MCL 712A.2d(7); MSA 27.3178(598.2d)(7).

MCR 5.903(D)(3) defines a designated case as either a prosecutor-designated case or a court-designated case. Only the prosecuting attorney may designate a case or amend a petition to designate a case in which the petition alleges a specified juvenile violation, and only the prosecuting attorney may request the court to designate a case in which the petition alleges an offense other than a specified juvenile violation. MCR 5.914(D). Thus, although the prosecuting attorney initiates both types of designated proceedings, the court decides whether to designate a case where an offense other than a specified juvenile violation is alleged. See also MCL 712A.2d(1); MSA 27.3178(598.2d)(1) (amended petition may be filed only by leave of court).\*

\*See Form JC 04.

### A. Prosecutor-Designated Cases

In a “prosecutor-designated case,” the prosecuting attorney has endorsed a petition charging a juvenile with a specified juvenile violation with the designation that the juvenile is to be criminally tried in the Family Division in the same manner as an adult. MCR 5.903(D)(6), 5.903(D)(8)(a)–(r), and MCL 712A.2d(9)(a)–(i); MSA 27.3178(598.2d)(9)(a)–(i).\*

\*See Section 2.7(A), above, for a list of specified juvenile violations.

## B. Court-Designated Cases

\*See Sections 16.20 – 16.23 for the requirements for designation hearings.

\*See Michigan Sentencing Guidelines (2d ed, 1988) and Section 20.9, Note, on the status of legislative sentencing guidelines.

In a “court-designated case,” the court, pursuant to a request by the prosecutor, has decided according to the factors set forth in MCR 5.952(C)(3) that the juvenile is to be criminally tried in the Family Division in the same manner as an adult for an offense other than a specified juvenile violation. MCR 5.903(D)(2). A “designation hearing”<sup>\*</sup> must be held on the prosecutor’s request for case designation. MCR 5.903(D)(4) and MCL 712A.2d(2); MSA 27.3178(598.2d)(2). The court may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried in the same manner as an adult. In determining whether the best interests of the juvenile and the public would be served, the court must consider all of the following factors, giving greater weight to the seriousness of the alleged offense and the juvenile’s prior delinquency record than to the other factors:

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines,<sup>\*</sup> the use of a firearm or other dangerous weapon, and the impact on any victim.

(b) The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile’s participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(c) The juvenile’s prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(d) The juvenile’s programming history, including, but not limited to, the juvenile’s past willingness to participate meaningfully in available programming.

(e) The adequacy of the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile.

MCL 712A.2d(2)(a)–(f); MSA 27.3178(598.2d)(2)(a)–(f), and MCR 5.952(C)(3)(a)–(f).

### C. Transfer of Designated Cases After Trial for Entry of a Juvenile Disposition

Except when there is a change of venue,\* designated cases must be tried in the county where the offense occurred. MCR 5.926(F).

Following conviction, however, the court that tried the case may transfer the case to the juvenile's county of residence for entry of a juvenile disposition. If the juvenile is sentenced as an adult, imposition of the sentence (including delayed imposition of sentence) must be done in the county where the offense occurred. MCR 5.926(F) and MCL 712A.2(d); MSA 27.3178(598.2)(d).\*

\*See Section 16.40 (motions for change of venue in designated cases).

\*See Section 19.1 (court's options following conviction in designated cases).

### D. Offenses for Which Juveniles May Be Sentenced to Prison

MCL 712A.18h; MSA 27.3178(598.18h), states that a juvenile sentenced to imprisonment under MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), shall not be committed to the jurisdiction of the Department of Corrections unless the juvenile was convicted of a specified juvenile violation.\*

\*See Section 19.1, Note, for a detailed discussion of this statute.

## 2.10 Family Division Jurisdiction Over Juveniles Charged With Criminal Violations of Michigan Vehicle Code

Under MCL 712A.2b; MSA 27.3178(598.2b), the Family Division has jurisdiction over cases involving juveniles charged with criminal violations of the Michigan Vehicle Code, MCL 257.1 to 257.923; MSA 9.1801 to 9.2623, or a municipal ordinance substantially corresponding to such a violation.

MCL 712A.2b(a)–(e); MSA 27.3178(598.2b)(a)–(e), provide that:

(a) No petition need be filed: the court may act upon the written notice to appear given the accused juvenile pursuant to MCL 257.728; MSA 9.2428 (citation or appearance ticket for misdemeanor violations of Vehicle Code). See also MCR 5.903(B)(3) and 5.931(C) (citation or appearance ticket may serve as petition when offense alleged not a felony).

(b) The juvenile's parent, guardian, or custodian may be required to attend the hearing when notified by the court, but service of process is not required. The court may extend the time for this appearance.

(c) After the hearing, if the court finds the accusation to be true, it may dispose of the case in accordance with MCL 712A.18; MSA 27.3178(598.18).\*

\*See Chapter 12 (dispositions).

(d) If the court takes jurisdiction and enters a disposition order, it must also send an abstract of the record of the case to the Secretary of State, as required by MCL 257.732; MSA 9.2432.\*

\*See Section 12.23.

(e) The court may restrict the juvenile's driving privileges as a term or condition of probation.

\*See Section 7.4.

If a petition is filed, it must contain, if applicable, the notice required by MCL 257.732(7); MSA 9.2432(7), and the juvenile's driver's license number. MCR 5.931(B)(7).\*

The Family Division does not have jurisdiction over a traffic offense designated as a civil infraction. MCL 257.741(5); MSA 9.2441(5), MCR 5.903(A)(3) and 5.903(B)(4), and *Welch v District Court*, 215 Mich App 253, 257–58 (1996).

**NOTE:** For more detailed information on juvenile traffic offenses, see *Traffic Benchbook*, Volume 2, Chapter 3 (MJJ, 1993).

## 2.11 Family Division Jurisdiction and Authority Over Adults

The Family Division has jurisdiction over adults and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders must be incidental to the jurisdiction of the court over the juvenile or juveniles. MCL 712A.6; MSA 27.3178(598.6). The authority to fashion remedies under MCL 712A.6; MSA 27.3178(598.6), extends beyond MCL 712A.18; MSA 27.3178(598.18), which provides dispositional alternatives. *In re Macomber*, 436 Mich 386, 389–93, 398–400 (1990).

Under MCL 712A.6a; MSA 27.3178(598.6a), the parent or guardian of a juvenile over whom the court has assumed jurisdiction under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1) (criminal offenses), must attend all hearings unless excused for good cause. Thus, parents may be required to attend dispositional and review hearings. This provision is enforced through the court's contempt power and subjects the nonappearing parent to fines but not jail. However, failure of a parent or guardian to attend a hearing is not grounds for an adjournment, continuance, or appellate relief.

If a parent or guardian of a juvenile fails to attend a hearing before a judge or referee after having received a summons earlier in the proceedings and, subsequently, been given notice of the hearing by the court, the parent or guardian may be held in contempt of court and fined, although not jailed, as provided in MCL 600.1715; MSA 27A.1715. The contempt shall be considered criminal in nature, and the parent or guardian is entitled to a due process hearing. MCR 5.928. MCL 600.1715; MSA 27A.1715, allows for a fine of not more than \$250.00.

If the parent or guardian fails to pay the fine within a reasonable time set by the court, proceedings to enforce the fine may be either civil or criminal in nature and may include jail as provided in MCL 600.1715; MSA 27A.1715. MCR 5.928.

The parent or guardian will not be held in contempt if the court had, before the hearing, excused the parent's attendance or, at a hearing to consider the issue of contempt, the parent or guardian shows good cause for failure to attend the juvenile's hearing. MCR 5.928.

## 2.12 Family Division Jurisdiction of Contempt Proceedings

The Family Division has the power to punish for contempt of court\* in accordance with MCL 600.1701 et seq.; MSA 27A.1701 et seq., any person who wilfully violates, neglects, or refuses to obey and perform any order or process the court has made or issued while enforcing the provisions of the Juvenile Code. MCL 712A.26; MSA 27.3178(598.26). The court has jurisdiction over contempt proceedings involving contempt of its orders even where the contemnor is over 19 years of age at the time of the hearing. *In re Summerville*, 148 Mich App 334, 341 (1986).

\*See Form JC 40.

**NOTE:** The court may punish by the contempt power even after it has terminated jurisdiction over the juvenile. See Form JC 36 (Request and Order Terminating Court Jurisdiction), where the right to enforce payments of any delinquent account or unpaid reimbursement order is reserved.

For detailed information on contempt proceedings, see *Benchguide on Contempt of Court* (MJJ, 1987).

## 2.13 Transfer of Jurisdiction to Family Division Because Offender Was Under 17 at Time of Offense

If the alleged criminal offense was committed prior to the juvenile's 17th birthday but a complaint or petition is not filed until after the juvenile's 17th birthday, the issue arises as to which court has jurisdiction.

Under MCL 712A.5; MSA 27.3178(598.5), the Family Division does not have jurisdiction over a juvenile after he or she attains the age of 18, except as provided in MCL 712A.2a; MSA 27.3178(598.2a), governing continuing jurisdiction. On the other hand, MCL 712A.3; MSA 27.3178(598.3), requires another court to transfer the case to the Family Division of the county in which the other court is situated or where the juvenile resides if it is determined that the charged offense occurred when the juvenile was under 17 years of age.

The Court of Appeals has held that where a case is transferred to juvenile court pursuant to MCL 712A.3; MSA 27.3178(598.3), the juvenile court has jurisdiction, regardless of defendant's age at the time of transfer, for the limited purpose of holding a waiver hearing pursuant to MCL 712A.4; MSA 27.3178(598.4) ("traditional" waiver).\*

\*See Section 24.3 for a more detailed discussion of this procedure.

## 2.14 Transfer of Jurisdiction in Delinquency Cases From County Where Offense Occurred to County Where Juvenile Resides

\*See Form JC 29.

Hearings on “traditional” waivers and prosecutions of designated cases must occur in the Family Division of the county in which the offense occurred. MCL 712A.4(1); MSA 27.3178(598.4)(1), MCL 712A.2(d); MSA 27.3178(598.2)(d), and MCR 5.926(F). In all other matters, if any juvenile is brought before the Family Division in a county other than the county in which he or she resides, the court may, before a hearing and with the consent of the Family Division judge of the juvenile’s county of residence, enter an order transferring jurisdiction over the matter to the court of the county of residence.\* The order and a certified copy of the record of any proceedings in the case must be transferred to the court of the county or circuit of residence without charge. MCL 712A.2(d); MSA 27.3178(598.2)(d), MCR 5.926(B) and 5.926(E). MCR 5.926(B) adds that transfer must occur before trial.

MCR 5.926(C) provides that when disposition is ordered by a Family Division other than the Family Division in a county where the juvenile resides, the court ordering disposition is responsible for any costs incurred in connection with the order unless:

- F the court in the county where the juvenile resides agrees to pay such dispositional costs, or
- F the juvenile is made a ward of the state pursuant to the Youth Rehabilitative Services Act, MCL 803.301 et seq.; MSA 25.399(51) et seq., and the county of residence withholds consent to transfer of the case.

## 2.15 Venue and Change of Venue in Delinquency Cases

In delinquency cases, venue is proper where the offense occurred or where the juvenile is physically present. MCL 712A.2(a) and (d); MSA 27.3178(598.2)(a) and (d), and MCR 5.926(A). The case may also be transferred to the juvenile’s county of residence. MCR 5.926(B).

MCR 5.926(D) states that venue may be changed upon motion of a party, and that all costs of the proceeding are to be borne by the Family Division that ordered the change of venue. There are two circumstances allowing for change of venue:

- (1) for the convenience of the parties and witnesses if the judge of the other court agrees to hear the case, or
- (2) when an impartial trial cannot be had where the case is pending.

MCR 5.926(D)(1)–(2).

As in a case that is transferred, the court ordering a change of venue shall send the original or certified copies of the record of the case to the receiving court without charge. MCR 5.926(E).

**NOTE:** A practical problem occurs when a juvenile's case is tried in the county where the offense occurred following a change of venue from the county of residence. The issue is which court makes the disposition and which court assumes responsibility for payment of dispositional costs. Neither statute nor court rule provide for bifurcated proceedings, with trial in the county where the offense occurred and disposition in the county of residence.

## 2.16 Notice to Courts With Prior or Continuing Jurisdiction

Where the child is subject to a prior or continuing order of any other court of this state, notice must be filed in such other court of any order subsequently entered under the Juvenile Code. MCL 712A.3a; MSA 27.3178(598.3a).<sup>\*</sup> Notice must also be served, personally or by registered-mail service, on the parents, guardians, or person in loco parentis and to the prosecuting attorney of the county where the other court is located. Such notices shall not disclose any allegations or findings of fact set forth in petitions or orders, or the actual person or institution to whom custody is changed. *Id.*

<sup>\*</sup>See Form  
MC 28.

MCR 5.927 provides that the manner of notice to the other court and the authority of the Family Division to proceed are governed by MCR 3.205. A waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court. MCR 3.205(A). See, generally, *In re Foster*, 226 Mich App 348, 353–57 (1997). The plaintiff or other initiating party must mail written notice of proceedings to:

- (a) the clerk or register in the prior court, and
- (b) the appropriate official of the prior court.

MCR 3.205(B)(2)(a)–(b).

The “appropriate official” means the friend of the court, juvenile officer, or prosecuting attorney, depending on the type of proceeding. MCR 3.205(B)(1).

**NOTE:** Although MCR 3.205(B) states that the plaintiff or other initiating party must mail the required notice, as a practical matter, the deputy register often sends the notice. See Form MC 28, which requires the signature of the court clerk, register, or deputy register.

The notice must be mailed at least 21 days before the date set for hearing, except that if the fact of continuing jurisdiction is not then known, notice must be given immediately when it becomes known. MCR 3.205(B)(3).

Upon receipt of notice, the appropriate official of the prior court:

- (a) must provide the subsequent court with copies of all relevant orders then in effect and copies of relevant records and reports, and
- (b) may appear in person at proceedings in the subsequent court, as the welfare of the minor and the interests of justice require.

MCR 3.205(D)(1)(a)–(b).

Upon request of the prior court, the appropriate official of the subsequent court:

- (a) must notify the appropriate official of the prior court of all proceedings in the subsequent court, and
- (b) must send copies of all orders entered in the subsequent court to the attention of the clerk or register and the appropriate official of the prior court.

MCR 3.205(D)(2)(a)–(b).

Each provision of a prior order remains in effect until the provision is superseded, changed, or terminated by a subsequent order. MCR 3.205(C)(1). A subsequent order must give due consideration to prior continuing orders of other courts, and a court may not enter orders contrary to or inconsistent with such orders, except as provided by law. MCR 3.205(C)(2).